

GRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA RECORDATION NO. 9843 Filed 1425

NEW YORK, N.Y. 10005

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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Date NOV 17 1978
Fee \$ 200.00

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INTERSTATE COMMERCE COMMISSION

November 17, 1978

Diamond Shamrock Corporation

Lease Financing Dated as of July 15, 1978

Dear Sir:

Enclosed herewith for recordation pursuant to Section 20c of the Interstate Commerce Act are six counterparts of each of the following:

(1) Purchase Order Assignment dated as of July 15, 1978, among Diamond Shamrock Corporation, 1100 Superior Avenue, Cleveland, Ohio 44114 (the "Lessee"), Exchange National Bank of Chicago, as Owner-Trustee (the "Lessor"), LaSalle and Adams Streets, Chicago, Illinois 60690; ACF Industries Incorporated, 750 Third Avenue, New York, N. Y. 10017; and Tank Lining Corp., Post Office Box H, Oakdale, Pennsylvania 15071;

(2) Lease of Railroad Equipment dated as of July 15, 1978, between the Lessee and the Lessor;

(3) Security Agreement dated as of July 15, 1978, between the Lessor and First Pennsylvania Bank N.A., as Agent, 1500 Chestnut Street, Philadelphia, Pennsylvania 19102 and

RECEIVED

Counterspart Larry Jones

COUNSEL

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CABLE ADDRESSES

GRAVATH, N. Y.
GRAVATH, PARIS
GRAVATH, LONDON E.C. 2

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INTERSTATE COMMERCE COMMISSION

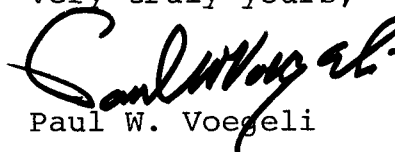
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(4) Lease dated as of July 15, 1978, between the Lessor and NAC Leasing Corporation, 222 South Riverside Plaza, Chicago, Illinois 60606.

The Equipment covered by the Agreements described above consists of 100 100-ton roller bearing-CF 5250 hopper cars, equipped with 20" hatches and pneumatic outlets, built generally to specification No. SCL-CF-SS2 bearing road numbers DAX 2101 through 2200, both inclusive.

Each unit bears the legend "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c".

Enclosed is a check for \$200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts and the enclosed copy of this letter with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,


Paul W. Voegeli

The Honorable H. G. Homme,
Acting Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

L

BY HAND

9843 - A

REGISTRATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of July 15, 1978

between

DIAMOND SHAMROCK CORPORATION,
Lessee

and

EXCHANGE NATIONAL BANK OF CHICAGO,
not in its individual capacity, but
solely as Owner-Trustee under a Trust
Agreement dated as of July 15, 1978,
with Security Pacific Equipment Leasing, Inc.,
Lessor

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TESTIMONIUM

EXECUTION

LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1978, between DIAMOND SHAMROCK CORPORATION, a Delaware corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, not in its individual capacity, but solely as Owner-Trustee under a Trust Agreement dated as of July 15, 1978 (hereinafter in such capacity called the Lessor) with Security Pacific Equipment Leasing, Inc. (hereinafter called the Owner).

WHEREAS (a) the Lessee and ACF Industries Incorporated, a New Jersey corporation (hereinafter sometimes called ACF), have entered into a Purchase Order dated June 6, 1978 (confirming an earlier telex), for the manufacture and sale of the railroad equipment described in Schedule A hereto, and (b) the Lessee and Tank Lining Corp., a Pennsylvania corporation (hereinafter sometimes called Tank Lining; ACF and Tank Lining being hereinafter sometimes collectively called the Builders and each individually a Builder), have entered into Purchase Order No. TR-125889 for the lining of the railroad equipment to be manufactured by ACF pursuant to the Purchase Order with ACF referred to above;

WHEREAS the Builders, the Lessor and the Lessee are entering into a Purchase Order Assignment dated as of the date hereof (hereinafter called the Purchase Order Assignment, the Purchase Order Assignment and the two Purchase Orders referred to above being hereinafter sometimes collectively called the Manufacturing Agreement), wherein ACF has agreed to construct and sell to the Lessor and the Lessor has agreed to purchase such railroad equipment which is the subject of the Purchase Order with ACF referred to above after it has been constructed by ACF, and wherein Tank Lining has agreed to line and the Lessor has agreed to pay the cost of lining such railroad equipment which is the subject of the Purchase Order with Tank Lining referred to above after it has been lined by Tank Lining;

WHEREAS the Lessee desires to lease from the Lessor all the units of said equipment, or such lesser number as are delivered, accepted and settled for under the Manufacturing Agreement on or prior to December 31, 1978 (such units being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor is entering into a Security Agreement dated as of the date hereof (hereinafter called the Security Documentation) with FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Secured Party), pursuant to which it is assigning to the Secured Party for security purposes the Lessor's interests in the Purchase Order Assignment, the Units and this Lease.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Secured Party or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignment. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Purchase Order Assignment. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance), in accordance with the provisions of Article 5 of the Purchase Order Assignment, stating that such Unit has been inspected and accepted for purposes of this Lease on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except for any claims which the Lessor or the Lessee may have against any Builder and as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Purchase Order Assignment pursuant to the first paragraph of Article 2 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 40 consecutive semiannual payments payable on July 1, 1979, and on each July 1 and January 1 thereafter, to and including January 1, 1999. The first 20 rental payments shall each be in an amount equal to 3.8597% of the Purchase Price (as defined in the Purchase Order Assignment) of each Unit then subject to this Lease, and the remaining 20 rental payments shall each be in an amount equal to 4.7173% of the Purchase Price of each Unit then subject to this Lease.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Cleveland, Ohio, Chicago, Illinois, and, until the Secured Notes (as defined in the Security Documentation) have been paid

in full, Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Secured Party, for the account of the Lessor in care of the Secured Party; provided, however, that after all the Secured Notes have been paid in full, all of such payments shall be made directly to the Lessor at its office set forth in § 17 hereof; provided, further, that any indemnity payable to the Lessor pursuant to § 9 hereof and taxes and indemnities payable or reimbursed to the Lessor under § 6 hereof shall be paid by check of the Lessee directly to the party to receive the same. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Secured Party by 11:00 a.m., Philadelphia time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, unless otherwise terminated pursuant to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The unfulfilled obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default hereunder all rights and obligations of the Lessee under this Lease and in and to the Units will become subject to the rights of the Secured Party under the Security Documentation. If an Event of Default should occur under the Security Documentation as the result of an Event of Default hereunder, the Secured Party may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly,

permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Secured Party's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Secured Party under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Secured Party and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Secured Party and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates or sublessees, as the case may be.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes including gross receipts taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all franchise and capital stock taxes and state or local income taxes or state or local receipts taxes in lieu of any income tax (except for those of the States of Washington and West Virginia) [and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax] which would be payable to the state and locality in which the Lessor has its principal place of

business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof will not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Secured Party under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment, and shall have given the Lessee the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense, but the opportunity to contest need not be given if the Lessor or the Secured Party in good faith determines that withholding payment of such impositions would materially endanger the Lessor's or Secured Party's right, title or interest in the Equipment or its proceeds.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Secured Party or

otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Secured Party as shall be reasonably satisfactory to the Lessor and the Secured Party or, where not so permitted, will notify the Lessor and the Secured Party of such requirement and will prepare and deliver such reports to the Lessor and the Secured Party within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Secured Party.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name, but with counsel satisfactory to the Lessor and on the Lessor's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessor and the Lessee hereby confirm that the Owner has agreed in Paragraph 11(b) of the Participation Agreement dated as of July 15, 1978 (hereinafter called the Participation Agreement), among the Lessor, the Lessee, the Owner, the Secured Party and the Purchasers therein named that the Owner will elect under section 48(d) of the Internal Revenue Code of 1954, as amended, or any successor law, within the period prescribed in section 1.48-4(f)(2) of the Regulations thereunder, to treat the Lessee as having acquired the Equipment for investment tax credit purposes.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, returned to the relevant Builder pursuant to the patent indemnity provisions of the Purchase Order Assignment, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days, except requisition for use by the United States Government or any political subdivision thereof (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Secured Party with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. The Lessee shall also pay on such date an amount equal to the rental payment or payments in respect of such Unit due and payable on such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the relevant Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representation or warranty express or implied. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty

Value of such Unit plus out-of-pocket expenses of the Lessee in connection with the disposition of such unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the relevant Builder pursuant to the patent indemnity provisions of the Purchase Order Assignment in an amount equal to any payment made by such Builder to the Lessor in respect thereof under the Purchase Order Assignment.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the number of such payment date in the column headed "Casualty Value Percentage".

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 35.287% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representation or warranty express or implied. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the

Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, in an amount equal to the aggregate Casualty Value of all such Units and public liability insurance covering damage to property as a result of a single occurrence of at least \$5,000,000 and bodily injuries as a result of a single occurrence of at least \$5,000,000, and the benefits thereof shall be payable to the Secured Party, the Lessor and the Lessee, as their interests may appear. Any such insurance may have applicable thereto deductible provisions not exceeding \$1,800,000 per occurrence. Each policy of insurance required by this paragraph shall provide that (i) it will not be invalidated as against the Lessor or the Secured Party because of any violation of a condition or warranty of the policy or the application therefor by the Lessee, (ii) it may be materially altered or canceled by the insurer only after thirty (30) days prior written notice to the Lessor and the Secured Party, (iii) it shall be prepaid a minimum of ninety (90) days (but not beyond the term thereof) and (iv) all the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Secured Party. Such insurance policies shall also not have any co-insurance clauses. In the event the Lessee shall desire

to permit any Unit to be used to carry any substance classified by the Office of Hazardous Material Operations of the Federal Railway Administration in the United States Department of Transportation as a "hazardous material", the Lessee shall promptly notify the Lessor and the Secured Party and, if requested by either the Lessor or the Secured Party, the Lessee shall obtain such increased public liability insurance as is commercially available for similar risks for similar products (as to risks covered, policy amounts of the above-described insurance, policy provisions or otherwise) related to such Unit or Units as either the Lessor or the Secured Party or both may from time to time reasonably request. The loss, if any, under any policy covering the Units shall be adjusted with the insurance companies by the Lessee, subject to the approval of the Lessor and the Secured Party if the loss exceeds \$100,000. If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired or applied as the Lessee shall direct for the repair of such damage.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Secured Party an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Secured Party may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the

numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times following at least three days' prior written notice to the Lessee as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against either Builder under the provisions of Schedule B to the Purchase Order Assignment; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor

that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the matters referred to in the immediately preceding sentence hereof.

The Lessee agrees, for the benefit of the Lessor and the Secured Party, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit which is required to be completed prior to the expiration of this Lease or any renewal hereof, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Secured Party, adversely affect the property or rights of the Lessor or the Secured Party under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Secured Party from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, of Third Parties (as hereinafter defined) regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest,

arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation (other than a default of the Lessor specified in Section 5.1(d) thereof), the Participation Agreement (other than any liability of the Lessor, the Owner or the Secured Party as a result of its own acts) or this Lease, the ownership (including liability for product defect or other strict liability in tort) of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Third Party shall, for purposes of this § 9, mean and include any individual, partnership, corporation, unincorporated organization or government or agency or political subdivision thereof, excepting only the Lessor, the Owner and the Secured Party and their respective successors and assigns (hereinafter in this § 9 called the Indemnitees) if and to the extent any Indemnatee is claiming for its own account and not directly or indirectly on behalf of any Third Party.

It is understood and agreed that the negligence of one Indemnatee shall not be imputed to any other Indemnatee.

Anything in this § 9 to the contrary notwithstanding, the Lessee shall not be required to indemnify any Indemnatee against any loss, damage, injury, claim or demand which (a) arises out of or is caused by the gross negligence or wilful misconduct of such Indemnatee (it being understood that the gross negligence or wilful misconduct of one Indemnatee shall not be imputed to any other Indemnatee), (b) arises out of or is caused by the violation by such Indemnatee of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (c) arises out of or is caused by the breach of an express duty, obligation, representation or warranty of such Indemnatee made herein or in any of the documents

related to the transactions contemplated hereby, (d) is related to any lien, charge, security interest or other encumbrance which the Lessee is not required herein or in any of the other documents related to the transactions contemplated hereby to pay or discharge, (e) is otherwise expressly stated herein or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnatee, or (f) results from a transfer of an interest of the Owner under the Trust Agreement dated as of July 15, 1978, between the Owner and the Lessor, unless such transfer was made with the approval of the Lessee.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Secured Party of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any portion thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Secured Party to the Lessee specifying the default and demanding that the same be remedied;

(D) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or

insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(E) an event of default set forth in Section 5.1 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

(F) final judgments for the payment of money in excess of \$1,000,000 in the aggregate shall be rendered against the Lessee, and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed; or

(G) default shall be made with respect to payments of any indebtedness of the Lessee or payment of lease obligations of the Lessee which are pledged or assigned to secure the repayment of borrowed money and the aggregate amount of any such default in payment is in excess of \$1,000,000;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the

use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process, if this can be done without unreasonable breach of the peace, and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value of each Unit as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of each Unit at such time; provided, however, that in the event that the Lessee shall object to the amount specified by the Lessor pursuant to either of the preceding clauses (x) and (y) the Lessee shall forthwith appoint an appraiser approved by the Lessor, and such appraiser shall at the

sole expense of the Lessee determine the applicable amount under the preceding clauses (x) and (y) and such determination shall be binding upon the Lessor and the Lessee, but such amount shall in any event be sufficient to repay the unpaid principal amount of the outstanding Secured Notes together with all accrued interest (including any penalty interest) thereon to the date of payment; provided, further, that in the event that the Lessor shall have sold any Unit (which sale shall be in a commercially reasonable manner), the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf; provided, however, that this sentence shall not prevent the Lessee from asserting such claims against a Builder or otherwise in any manner or forum other than as an offset against rental payments due hereunder.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the con-

tingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units within the continental United States upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage for 180 days or until such Units have been sold, leased or otherwise disposed of by the Lessor, whichever is earlier; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment, within a 25 mile radius of such storage tracks all as directed by the Lessor upon at least 30 days' prior written notice.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and

transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same during normal business hours and upon at least three days' prior written notice. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .028333% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall not be under any obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Secured Party).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units and to the quiet enjoyment thereof in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Secured Party (which consent shall not be unreasonably withheld), the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except and then

only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease for a term not exceeding one year (including all renewal or extension options reserved to the sublessee or sublessor), to any responsible solvent company incorporated under the laws of and having its principal place of business in one of the states of the United States of America or the District of Columbia, as determined by the Lessee, subject in each case to the written consent of the Lessor, which shall not be unreasonably withheld, except that the Lessee may for not more than 180 days in any two-year period during the term of this Lease sublease the Units without the consent of the Lessor under subleases having a term of not in excess of 180 days and which subleases shall not be renewed or renewable, and that the Lessee may, without the consent of the Lessor, lease any Unit under a trilease, which shall mean a sublease of a Unit to a vendor, consignor, vendee or consignee of the Lessee (or of any person whose rights hereunder are derived from, through or under the Lessee) for a term not in excess of the time expended during the transportation of a shipment therein to or from such vendor, consignor, vendee or consignee, including time expended during loading or unloading of such shipment or while awaiting such loading or unloading; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. For the purpose of this § 12 and of § 13(a) hereof, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Owner, the Lessor or the Secured Party or resulting from claims against the Owner, the Lessor

or the Secured Party not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Secured Party or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required so to pay or discharge any such lien, claim, security interest or other encumbrance so long as it shall in good faith and by appropriate legal proceedings, be contesting the validity thereof in a reasonable manner which will not adversely affect or endanger the title and interest of the Lessor or the Secured Party. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use within the continental United States or Canada of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or by any customer of the Lessee or any such Affiliate or upon lines of railroad over which the Lessee or any such Affiliate or any customer of the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate or of any customer of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the continental United States or Canada. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the Participation Agreement)

into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

The Lessee may receive and retain for its own account such compensation for assignment or subletting the Units and/or for use of the Units by others as the Lessee may determine.

§ 13. No Renewal Option; Right of First Refusal; Termination Option. (a) The Lessee shall not have any rights to renew this Lease at the end of the 20-year original term hereof.

(b) Unless an Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, the Lessor shall not at or within one year following the later to occur of the expiration of this Lease and the termination of the Lease Agreement (the "NAC Lease") dated as of July 15, 1978, between the Lessor, as lessor, and NAC Leasing Corporation, as lessee, whether such termination is at the scheduled expiration of the NAC Lease or otherwise, and provided that Lessee shall have given Lessor written notice no more than 14 days after written notice from Lessor of such termination or proposed termination that Lessee wants to retain its right of first refusal hereunder, sell any Unit unless:

(i) the Lessor shall have received from a responsible purchaser a bona fide offer in writing to purchase such Unit;

(ii) the Lessor shall have given the Lessee notice (A) setting forth in detail the identity of such purchaser, the proposed purchase price, the proposed date of purchase and all other material terms and conditions of such purchase, and (B) offering to sell such Unit to the Lessee upon the same terms and conditions as those set forth in such notice; and

(iii) the Lessee shall not have notified the Lessor, within 20 days following receipt of such notice, of its

election to purchase such Unit upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Unit, the Lessor may at any time sell such Unit to any party at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builders, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

(c) Provided that the Lessee is not in default hereunder, the Lessee may if, in its reasonable opinion, any Units of the Equipment shall have become economically obsolete and no longer useful in the conduct of its business, at any time on or after January 1, 1989, by written notice delivered to the Lessor at least 90 but not more than 180 days prior to the next succeeding semiannual rental payment date under this Lease cause this Lease to terminate on such next succeeding semiannual rental payment date (hereinafter called the Termination Date) as to not less than 50 of the Units or such lesser number as shall then be subject to this Lease; provided, however, that there shall remain subject to this Lease after such termination at least 20 of the Units if less than all the Units are terminated. On the Termination Date the Lessee shall pay the semiannual installment of rental otherwise payable on such date. After giving of the aforesaid notice, the Lessee shall at its own expense arrange on behalf of and as agent for the Lessor to sell all the terminated Units to a purchaser or purchasers (which shall not be the Lessee or any Affiliate of the Lessee) for cash in an arm's-length transaction at the highest price or prices obtainable, such sale or sales to be made as of the Termination Date. The Lessee will obtain a binding commitment in writing from each purchaser, which shall specify that the purchase price shall be payable directly to the Secured Party for the account of the Lessor in immediately available funds in Philadelphia on the Termination Date. Not later than 30 business days prior to the Termination Date the Lessee shall deliver to the Lessor a signed copy of each of the aforesaid binding commitments. The entire sales price of the Units will be for the account of the Lessor; provided, however,

that if such sales price is less than the aggregate Termination Value (as hereinafter defined) as of the Termination Date for all the Units being sold on the Termination Date, the Lessee will on the Termination Date pay to the Lessor in immediately available funds in Philadelphia, an amount equal to the difference between such aggregate Termination Value and such sales price.

The Termination Value of each Unit as of the Termination Date shall be an amount equal to the Casualty Value of such Unit as of the Termination Date plus an amount equal to the amount required to pay the premium in respect of such termination pursuant to clause second of Section 4.1(d) of the Security Documentation.

Upon payment of the purchase price of the Units so sold, the amount, if any, payable by the Lessee pursuant to the last sentence of the first paragraph of this § 13(c) and the rental payment payable on the Termination Date, the Lessor shall execute and deliver to the purchaser or purchasers of the Units, a bill or bills of sale (without warranties) for all the Units so sold such as will transfer to the purchaser or purchasers thereof such title to such Units as the Lessor derived from the Builders, free and clear of all liens, security interests and other encumbrances arising through the Lessor, whereupon this Lease will terminate as to the Units so sold. The Lessor agrees, at the expense of the Lessee, to obtain from the Secured Party, as of the Termination Date, the release of all the Units so sold from the Security Documentation.

§ 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks within the continental United States east of the Rocky Mountains as the Lessor may designate, or in the absence of such designation, as the Lessee may select and the Lessee will pay for the storage on such tracks for a period not exceeding 30 days (commencing after 100% of the Units then leased hereunder, have been delivered to such place of storage), the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except

in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) fit for loading and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of .024922% of the Purchase Price per day for any Unit not returned to the Lessor immediately upon the termination of the term of this Lease.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Purchase Order Assignment, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Secured Party for the purpose of proper protection, to their satisfaction, of the Secured Party's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Security Documentation; and the Lessee will promptly furnish to the Secured Party and the Lessor evidence of all such filing, registering, depositing or recording, and an

opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Secured Party and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10.20% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at LaSalle and Adams Streets, Chicago, Illinois 60690, Attention of Corporate Trust Officer;

(b) if to the Lessee, at 1100 Superior Avenue, Cleveland, Ohio 44114, attention of Secretary;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Secured Party at 1500 Chestnut Street, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Department.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Purchase Order Assignment, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No varia-

tion or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and, while the Security Documentation shall be in effect, consented to by the Secured Party.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Secured Party pursuant to the Security Documentation shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

§ 21. No Guarantee of Secured Notes or Residual Value. Nothing in this Agreement is intended or shall be construed to constitute a guarantee by the Lessee of the Secured Notes (as defined in the Participation Agreement) or a guarantee of the residual value of any Unit.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

DIAMOND SHAMROCK CORPORATION,

by

DCMille
TREASURER

[Corporate Seal]

Attest:

T. J. Nator
Assistant Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,
as Owner Trustee,

by

Vice President

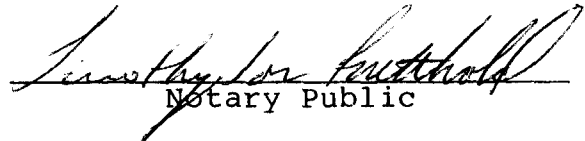
[Corporate Seal]

Attest:

Assistant Secretary

STATE OF OHIO,)
) ss.:
COUNTY OF CUYAHOGA,)

On this *14th* day of *November* 1978 before me personally appeared *D.L. Mielke*, to me personally known, who, being by me duly sworn, says that he is *Treasurer* of DIAMOND SHAMROCK CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Notarial Seal]

My Commission expires

TIMOTHY JON FROTHINGOLD, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1978 before me personally appeared , to me personally known, who, who, being by me duly sworn, says that he is a Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton roller bearing CF 5250 hopper cars, equipped with 20" hatches and pneumatic outlets, built generally to specification No. SCL-CF-SS2	100	DAX 2101-2200

SCHEDULE B TO LEASE

<u>Payment Date</u>	<u>Casualty Value Percentage</u>
First	105.4870
Second	108.8880
Third	107.6475
Fourth	110.2190
Fifth	108.9244
Sixth	110.7299
Seventh	109.3715
Eighth	110.4753
Ninth	109.1920
Tenth	109.6747
Eleventh	108.3828
Twelfth	108.3512
Thirteenth	106.9601
Fourteenth	106.4772
Fifteenth	104.9918
Sixteenth	104.1235
Seventeenth	102.5516
Eighteenth	101.3671
Nineteenth	99.7195
Twentieth	98.2908
Twenty-first	95.7326
Twenty-second	93.2656
Twenty-third	90.6132
Twenty-fourth	87.9876
Twenty-fifth	85.2196
Twenty-sixth	82.4472
Twenty-seventh	79.5364
Twenty-eighth	76.5957
Twenty-ninth	73.5154
Thirtieth	70.3864
Thirty-first	67.1153
Thirty-second	63.7851
Thirty-third	60.3174
Thirty-fourth	56.7931
Thirty-fifth	53.1646
Thirty-sixth	49.5539
Thirty-seventh	45.9172
Thirty-eighth	42.3330
Thirty-ninth	38.7674
Fortieth and thereafter	35.2870

LEASE OF RAILROAD EQUIPMENT

Dated as of July 15, 1978

between

DIAMOND SHAMROCK CORPORATION,
Lessee

and

EXCHANGE NATIONAL BANK OF CHICAGO,
not in its individual capacity, but
solely as Owner-Trustee under a Trust
Agreement dated as of July 15, 1978,
with Security Pacific Equipment Leasing, Inc.,
Lessor

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TESTIMONIUM

EXECUTION

LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1978, between DIAMOND SHAMROCK CORPORATION, a Delaware corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, not in its individual capacity, but solely as Owner-Trustee under a Trust Agreement dated as of July 15, 1978 (hereinafter in such capacity called the Lessor) with Security Pacific Equipment Leasing, Inc. (hereinafter called the Owner).

WHEREAS (a) the Lessee and ACF Industries Incorporated, a New Jersey corporation (hereinafter sometimes called ACF), have entered into a Purchase Order dated June 6, 1978 (confirming an earlier telex), for the manufacture and sale of the railroad equipment described in Schedule A hereto, and (b) the Lessee and Tank Lining Corp., a Pennsylvania corporation (hereinafter sometimes called Tank Lining; ACF and Tank Lining being hereinafter sometimes collectively called the Builders and each individually a Builder), have entered into Purchase Order No. TR-125889 for the lining of the railroad equipment to be manufactured by ACF pursuant to the Purchase Order with ACF referred to above;

WHEREAS the Builders, the Lessor and the Lessee are entering into a Purchase Order Assignment dated as of the date hereof (hereinafter called the Purchase Order Assignment, the Purchase Order Assignment and the two Purchase Orders referred to above being hereinafter sometimes collectively called the Manufacturing Agreement), wherein ACF has agreed to construct and sell to the Lessor and the Lessor has agreed to purchase such railroad equipment which is the subject of the Purchase Order with ACF referred to above after it has been constructed by ACF, and wherein Tank Lining has agreed to line and the Lessor has agreed to pay the cost of lining such railroad equipment which is the subject of the Purchase Order with Tank Lining referred to above after it has been lined by Tank Lining;

WHEREAS the Lessee desires to lease from the Lessor all the units of said equipment, or such lesser number as are delivered, accepted and settled for under the Manufacturing Agreement on or prior to December 31, 1978 (such units being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor is entering into a Security Agreement dated as of the date hereof (hereinafter called the Security Documentation) with FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Secured Party), pursuant to which it is assigning to the Secured Party for security purposes the Lessor's interests in the Purchase Order Assignment, the Units and this Lease.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Secured Party or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignment. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Purchase Order Assignment. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance), in accordance with the provisions of Article 5 of the Purchase Order Assignment, stating that such Unit has been inspected and accepted for purposes of this Lease on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except for any claims which the Lessor or the Lessee may have against any Builder and as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Purchase Order Assignment pursuant to the first paragraph of Article 2 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 40 consecutive semiannual payments payable on July 1, 1979, and on each July 1 and January 1 thereafter, to and including January 1, 1999. The first 20 rental payments shall each be in an amount equal to 3.8597% of the Purchase Price (as defined in the Purchase Order Assignment) of each Unit then subject to this Lease, and the remaining 20 rental payments shall each be in an amount equal to 4.7173% of the Purchase Price of each Unit then subject to this Lease.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Cleveland, Ohio, Chicago, Illinois, and, until the Secured Notes (as defined in the Security Documentation) have been paid

in full, Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Secured Party, for the account of the Lessor in care of the Secured Party; provided, however, that after all the Secured Notes have been paid in full, all of such payments shall be made directly to the Lessor at its office set forth in § 17 hereof; provided, further, that any indemnity payable to the Lessor pursuant to § 9 hereof and taxes and indemnities payable or reimbursed to the Lessor under § 6 hereof shall be paid by check of the Lessee directly to the party to receive the same. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Secured Party by 11:00 a.m., Philadelphia time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, unless otherwise terminated pursuant to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The unfulfilled obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default hereunder all rights and obligations of the Lessee under this Lease and in and to the Units will become subject to the rights of the Secured Party under the Security Documentation. If an Event of Default should occur under the Security Documentation as the result of an Event of Default hereunder, the Secured Party may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly,

permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Secured Party's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Secured Party under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Secured Party and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Secured Party and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates or sublessees, as the case may be.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes including gross receipts taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all franchise and capital stock taxes and state or local income taxes or state or local receipts taxes in lieu of any income tax (except for those of the States of Washington and West Virginia) [and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax] which would be payable to the state and locality in which the Lessor has its principal place of

business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof will not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Secured Party under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment, and shall have given the Lessee the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense, but the opportunity to contest need not be given if the Lessor or the Secured Party in good faith determines that withholding payment of such impositions would materially endanger the Lessor's or Secured Party's right, title or interest in the Equipment or its proceeds.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Secured Party or

otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Secured Party as shall be reasonably satisfactory to the Lessor and the Secured Party or, where not so permitted, will notify the Lessor and the Secured Party of such requirement and will prepare and deliver such reports to the Lessor and the Secured Party within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Secured Party.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name, but with counsel satisfactory to the Lessor and on the Lessor's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessor and the Lessee hereby confirm that the Owner has agreed in Paragraph 11(b) of the Participation Agreement dated as of July 15, 1978 (hereinafter called the Participation Agreement), among the Lessor, the Lessee, the Owner, the Secured Party and the Purchasers therein named that the Owner will elect under section 48(d) of the Internal Revenue Code of 1954, as amended, or any successor law, within the period prescribed in section 1.48-4(f)(2) of the Regulations thereunder, to treat the Lessee as having acquired the Equipment for investment tax credit purposes.

§ 7. Maintenance; Casualty Occurrences; Insurance.
The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, returned to the relevant Builder pursuant to the patent indemnity provisions of the Purchase Order Assignment, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days, except requisition for use by the United States Government or any political subdivision thereof (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Secured Party with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. The Lessee shall also pay on such date an amount equal to the rental payment or payments in respect of such Unit due and payable on such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the relevant Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representation or warranty express or implied. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty

Value of such Unit plus out-of-pocket expenses of the Lessee in connection with the disposition of such unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the relevant Builder pursuant to the patent indemnity provisions of the Purchase Order Assignment in an amount equal to any payment made by such Builder to the Lessor in respect thereof under the Purchase Order Assignment.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the number of such payment date in the column headed "Casualty Value Percentage".

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 35.287% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis without representation or warranty express or implied. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the

Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, in an amount equal to the aggregate Casualty Value of all such Units and public liability insurance covering damage to property as a result of a single occurrence of at least \$5,000,000 and bodily injuries as a result of a single occurrence of at least \$5,000,000, and the benefits thereof shall be payable to the Secured Party, the Lessor and the Lessee, as their interests may appear. Any such insurance may have applicable thereto deductible provisions not exceeding \$1,800,000 per occurrence. Each policy of insurance required by this paragraph shall provide that (i) it will not be invalidated as against the Lessor or the Secured Party because of any violation of a condition or warranty of the policy or the application therefor by the Lessee, (ii) it may be materially altered or canceled by the insurer only after thirty (30) days prior written notice to the Lessor and the Secured Party, (iii) it shall be prepaid a minimum of ninety (90) days (but not beyond the term thereof) and (iv) all the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Secured Party. Such insurance policies shall also not have any co-insurance clauses. In the event the Lessee shall desire

to permit any Unit to be used to carry any substance classified by the Office of Hazardous Material Operations of the Federal Railway Administration in the United States Department of Transportation as a "hazardous material", the Lessee shall promptly notify the Lessor and the Secured Party and, if requested by either the Lessor or the Secured Party, the Lessee shall obtain such increased public liability insurance as is commercially available for similar risks for similar products (as to risks covered, policy amounts of the above-described insurance, policy provisions or otherwise) related to such Unit or Units as either the Lessor or the Secured Party or both may from time to time reasonably request. The loss, if any, under any policy covering the Units shall be adjusted with the insurance companies by the Lessee, subject to the approval of the Lessor and the Secured Party if the loss exceeds \$100,000. If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired or applied as the Lessee shall direct for the repair of such damage.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Secured Party an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Secured Party may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the

numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times following at least three days' prior written notice to the Lessee as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against either Builder under the provisions of Schedule B to the Purchase Order Assignment; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor

that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the matters referred to in the immediately preceding sentence hereof.

The Lessee agrees, for the benefit of the Lessor and the Secured Party, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit which is required to be completed prior to the expiration of this Lease or any renewal hereof, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Secured Party, adversely affect the property or rights of the Lessor or the Secured Party under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Secured Party from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, of Third Parties (as hereinafter defined) regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest,

arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation (other than a default of the Lessor specified in Section 5.1(d) thereof), the Participation Agreement (other than any liability of the Lessor, the Owner or the Secured Party as a result of its own acts) or this Lease, the ownership (including liability for product defect or other strict liability in tort) of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Third Party shall, for purposes of this § 9, mean and include any individual, partnership, corporation, unincorporated organization or government or agency or political subdivision thereof, excepting only the Lessor, the Owner and the Secured Party and their respective successors and assigns (hereinafter in this § 9 called the Indemnitees) if and to the extent any Indemnatee is claiming for its own account and not directly or indirectly on behalf of any Third Party.

It is understood and agreed that the negligence of one Indemnatee shall not be imputed to any other Indemnatee.

Anything in this § 9 to the contrary notwithstanding, the Lessee shall not be required to indemnify any Indemnatee against any loss, damage, injury, claim or demand which (a) arises out of or is caused by the gross negligence or wilful misconduct of such Indemnatee (it being understood that the gross negligence or wilful misconduct of one Indemnatee shall not be imputed to any other Indemnatee), (b) arises out of or is caused by the violation by such Indemnatee of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (c) arises out of or is caused by the breach of an express duty, obligation, representation or warranty of such Indemnatee made herein or in any of the documents

related to the transactions contemplated hereby, (d) is related to any lien, charge, security interest or other encumbrance which the Lessee is not required herein or in any of the other documents related to the transactions contemplated hereby to pay or discharge, (e) is otherwise expressly stated herein or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnitee, or (f) results from a transfer of an interest of the Owner under the Trust Agreement dated as of July 15, 1978, between the Owner and the Lessor, unless such transfer was made with the approval of the Lessee.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Secured Party of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any portion thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Secured Party to the Lessee specifying the default and demanding that the same be remedied;

(D) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or

insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(E) an event of default set forth in Section 5.1 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

(F) final judgments for the payment of money in excess of \$1,000,000 in the aggregate shall be rendered against the Lessee, and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed; or

(G) default shall be made with respect to payments of any indebtedness of the Lessee or payment of lease obligations of the Lessee which are pledged or assigned to secure the repayment of borrowed money and the aggregate amount of any such default in payment is in excess of \$1,000,000;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the

use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process, if this can be done without unreasonable breach of the peace, and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value of each Unit as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of each Unit at such time; provided, however, that in the event that the Lessee shall object to the amount specified by the Lessor pursuant to either of the preceding clauses (x) and (y) the Lessee shall forthwith appoint an appraiser approved by the Lessor, and such appraiser shall at the

sole expense of the Lessee determine the applicable amount under the preceding clauses (x) and (y) and such determination shall be binding upon the Lessor and the Lessee, but such amount shall in any event be sufficient to repay the unpaid principal amount of the outstanding Secured Notes together with all accrued interest (including any penalty interest) thereon to the date of payment; provided, further, that in the event that the Lessor shall have sold any Unit (which sale shall be in a commercially reasonable manner), the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf; provided, however, that this sentence shall not prevent the Lessee from asserting such claims against a Builder or otherwise in any manner or forum other than as an offset against rental payments due hereunder.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the con-

tingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units within the continental United States upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage for 180 days or until such Units have been sold, leased or otherwise disposed of by the Lessor, whichever is earlier; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment, within a 25 mile radius of such storage tracks all as directed by the Lessor upon at least 30 days' prior written notice.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and

transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same during normal business hours and upon at least three days' prior written notice. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .028333% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall not be under any obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Secured Party).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units and to the quiet enjoyment thereof in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Secured Party (which consent shall not be unreasonably withheld), the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except and then

only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease for a term not exceeding one year (including all renewal or extension options reserved to the sublessee or sublessor), to any responsible solvent company incorporated under the laws of and having its principal place of business in one of the states of the United States of America or the District of Columbia, as determined by the Lessee, subject in each case to the written consent of the Lessor, which shall not be unreasonably withheld, except that the Lessee may for not more than 180 days in any two-year period during the term of this Lease sublease the Units without the consent of the Lessor under subleases having a term of not in excess of 180 days and which subleases shall not be renewed or renewable, and that the Lessee may, without the consent of the Lessor, lease any Unit under a trilease, which shall mean a sublease of a Unit to a vendor, consignor, vendee or consignee of the Lessee (or of any person whose rights hereunder are derived from, through or under the Lessee) for a term not in excess of the time expended during the transportation of a shipment therein to or from such vendor, consignor, vendee or consignee, including time expended during loading or unloading of such shipment or while awaiting such loading or unloading; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. For the purpose of this § 12 and of § 13(a) hereof, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Owner, the Lessor or the Secured Party or resulting from claims against the Owner, the Lessor

or the Secured Party not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Secured Party or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required so to pay or discharge any such lien, claim, security interest or other encumbrance so long as it shall in good faith and by appropriate legal proceedings, be contesting the validity thereof in a reasonable manner which will not adversely affect or endanger the title and interest of the Lessor or the Secured Party. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use within the continental United States or Canada of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or by any customer of the Lessee or any such Affiliate or upon lines of railroad over which the Lessee or any such Affiliate or any customer of the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate or of any customer of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the continental United States or Canada. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the Participation Agreement)

into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

The Lessee may receive and retain for its own account such compensation for assignment or subletting the Units and/or for use of the Units by others as the Lessee may determine.

§ 13. No Renewal Option; Right of First Refusal; Termination Option. (a) The Lessee shall not have any rights to renew this Lease at the end of the 20-year original term hereof.

(b) Unless an Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, the Lessor shall not at or within one year following the later to occur of the expiration of this Lease and the termination of the Lease Agreement (the "NAC Lease") dated as of July 15, 1978, between the Lessor, as lessor, and NAC Leasing Corporation, as lessee, whether such termination is at the scheduled expiration of the NAC Lease or otherwise, and provided that Lessee shall have given Lessor written notice no more than 14 days after written notice from Lessor of such termination or proposed termination that Lessee wants to retain its right of first refusal hereunder, sell any Unit unless:

(i) the Lessor shall have received from a responsible purchaser a bona fide offer in writing to purchase such Unit;

(ii) the Lessor shall have given the Lessee notice (A) setting forth in detail the identity of such purchaser, the proposed purchase price, the proposed date of purchase and all other material terms and conditions of such purchase, and (B) offering to sell such Unit to the Lessee upon the same terms and conditions as those set forth in such notice; and

(iii) the Lessee shall have notified the Lessor, within 20 days following receipt of such notice, of its

election to purchase such Unit upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Unit, the Lessor may at any time sell such Unit to any party at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builders, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

(c) Provided that the Lessee is not in default hereunder, the Lessee may if, in its reasonable opinion, any Units of the Equipment shall have become economically obsolete and no longer useful in the conduct of its business, at any time on or after January 1, 1989, by written notice delivered to the Lessor at least 90 but not more than 180 days prior to the next succeeding semiannual rental payment date under this Lease cause this Lease to terminate on such next succeeding semiannual rental payment date (hereinafter called the Termination Date) as to not less than 50 of the Units or such lesser number as shall then be subject to this Lease; provided, however, that there shall remain subject to this Lease after such termination at least 20 of the Units if less than all the Units are terminated. On the Termination Date the Lessee shall pay the semiannual installment of rental otherwise payable on such date. After giving of the aforesaid notice, the Lessee shall at its own expense arrange on behalf of and as agent for the Lessor to sell all the terminated Units to a purchaser or purchasers (which shall not be the Lessee or any Affiliate of the Lessee) for cash in an arm's-length transaction at the highest price or prices obtainable, such sale or sales to be made as of the Termination Date. The Lessee will obtain a binding commitment in writing from each purchaser, which shall specify that the purchase price shall be payable directly to the Secured Party for the account of the Lessor in immediately available funds in Philadelphia on the Termination Date. Not later than 30 business days prior to the Termination Date the Lessee shall deliver to the Lessor a signed copy of each of the aforesaid binding commitments. The entire sales price of the Units will be for the account of the Lessor; provided, however,

that if such sales price is less than the aggregate Termination Value (as hereinafter defined) as of the Termination Date for all the Units being sold on the Termination Date, the Lessee will on the Termination Date pay to the Lessor in immediately available funds in Philadelphia, an amount equal to the difference between such aggregate Termination Value and such sales price.

The Termination Value of each Unit as of the Termination Date shall be an amount equal to the Casualty Value of such Unit as of the Termination Date plus an amount equal to the amount required to pay the premium in respect of such termination pursuant to clause second of Section 4.1(d) of the Security Documentation.

Upon payment of the purchase price of the Units so sold, the amount, if any, payable by the Lessee pursuant to the last sentence of the first paragraph of this § 13(c) and the rental payment payable on the Termination Date, the Lessor shall execute and deliver to the purchaser or purchasers of the Units, a bill or bills of sale (without warranties) for all the Units so sold such as will transfer to the purchaser or purchasers thereof such title to such Units as the Lessor derived from the Builders, free and clear of all liens, security interests and other encumbrances arising through the Lessor, whereupon this Lease will terminate as to the Units so sold. The Lessor agrees, at the expense of the Lessee, to obtain from the Secured Party, as of the Termination Date, the release of all the Units so sold from the Security Documentation.

§ 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks within the continental United States east of the Rocky Mountains as the Lessor may designate, or in the absence of such designation, as the Lessee may select and the Lessee will pay for the storage on such tracks for a period not exceeding 30 days (commencing after 100% of the Units then leased hereunder, have been delivered to such place of storage), the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except

in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) fit for loading and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of .024922% of the Purchase Price per day for any Unit not returned to the Lessor immediately upon the termination of the term of this Lease.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Purchase Order Assignment, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Secured Party for the purpose of proper protection, to their satisfaction, of the Secured Party's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Security Documentation; and the Lessee will promptly furnish to the Secured Party and the Lessor evidence of all such filing, registering, depositing or recording, and an

opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Secured Party and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10.20% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at LaSalle and Adams Streets, Chicago, Illinois 60690, Attention of Corporate Trust Officer;

(b) if to the Lessee, at 1100 Superior Avenue, Cleveland, Ohio 44114, attention of Secretary;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Secured Party at 1500 Chestnut Street, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Department.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the Purchase Order Assignment, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No varia-

tion or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and, while the Security Documentation shall be in effect, consented to by the Secured Party.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Secured Party pursuant to the Security Documentation shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

§ 21. No Guarantee of Secured Notes or Residual Value. Nothing in this Agreement is intended or shall be construed to constitute a guarantee by the Lessee of the Secured Notes (as defined in the Participation Agreement) or a guarantee of the residual value of any Unit.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

DIAMOND SHAMROCK CORPORATION,

by _____

[Corporate Seal]

Attest:

Assistant Secretary

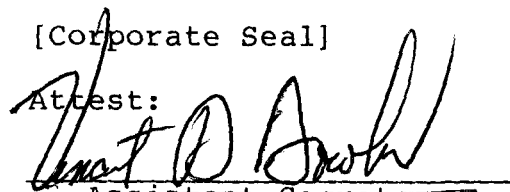
EXCHANGE NATIONAL BANK OF CHICAGO,
as Owner Trustee.

by


Vice President

[Corporate Seal]

Attest:


Assistant Secretary
ASSISTANT TRUST OFFICER

STATE OF OHIO,)
) ss.:
COUNTY OF CUYAHOGA,)

On this day of 1978 before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of DIAMOND SHAMROCK CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

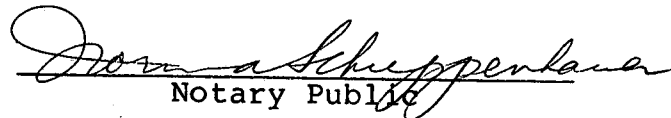
Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 13 day of November 1978 before me personally appeared MICHAEL D. GOODMAN who, who, being by me duly sworn, says that he is a Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.


Notary Public

[Notarial Seal]

My Commission expires May 27, 1979



SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton roller bearing CF 5250 hopper cars, equipped with 20" hatches and pneumatic outlets, built generally to specification No. SCL-CF-SS2	100	DAX 2101-2200

SCHEDULE B TO LEASE

<u>Payment Date</u>	<u>Casualty Value Percentage</u>
First	105.4870
Second	108.8880
Third	107.6475
Fourth	110.2190
Fifth	108.9244
Sixth	110.7299
Seventh	109.3715
Eighth	110.4753
Ninth	109.1920
Tenth	109.6747
Eleventh	108.3828
Twelfth	108.3512
Thirteenth	106.9601
Fourteenth	106.4772
Fifteenth	104.9918
Sixteenth	104.1235
Seventeenth	102.5516
Eighteenth	101.3671
Nineteenth	99.7195
Twentieth	98.2908
Twenty-first	95.7326
Twenty-second	93.2656
Twenty-third	90.6132
Twenty-fourth	87.9876
Twenty-fifth	85.2196
Twenty-sixth	82.4472
Twenty-seventh	79.5364
Twenty-eighth	76.5957
Twenty-ninth	73.5154
Thirtieth	70.3864
Thirty-first	67.1153
Thirty-second	63.7851
Thirty-third	60.3174
Thirty-fourth	56.7931
Thirty-fifth	53.1646
Thirty-sixth	49.5539
Thirty-seventh	45.9172
Thirty-eighth	42.3330
Thirty-ninth	38.7674
Fortieth and thereafter	35.2870